



Law Offices

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Apruzzese, McDermott,
Mastro & Murphy, P.C.
(Established 1965)

Arthur R. Thibault, Esq.
Athibault@ammmp.com

November 12, 2021

ELECTRONICALLY FILED

William T. Walsh, Clerk,
United States District Court
For the District of New Jersey
Martin Luther King Jr., Federal Building & Courthouse
Room 4040
50 Walnut Street
Newark, New Jersey 07101

Re: *John Tayag-Kosky v. Town of Kearny*
New Jersey Superior Court Docket No.: HUD-L-3913-21

Dear Mr. Walsh:

This law firm represents Defendant Town of Kearny in the above-referenced matter. Enclosed please find the following removal documents filed on behalf of Defendant:

1. Notice to New Jersey Superior Court of Filing Notice of Removal; and
2. Petition for Removal with an Exhibit and Certification of Service attached.

Respectfully,

/s/ Arthur R. Thibault
Arthur R. Thibault, Jr., Esq.

ART/bos
Enclosures

cc: Superior Court Clerk, Hudson County (w/ enclosures via e-filing)
John D. Feeley, Esq. (w/ enclosures via e-filing and Federal Express)

Arthur R. Thibault, Jr., Esq. (#023631998)
Boris Shapiro, Esq. (#024742009)
APRUZZESE, McDERMOTT,
MASTRO & MURPHY, P.C.
25 Independence Blvd.
Warren, New Jersey 07095
Telephone: (908) 580-1776
athibault@ammm.com
Attorneys for Defendant

JOHN TAYAG-KOSKY,

Plaintiff,

v.

TOWN OF KEARNY,

Defendant.

Civil Action No.: _____
State Court Docket No. HUD-L-3913-21

**NOTICE OF FILING
NOTICE OF REMOVAL
(Electronically Filed)**

TO: Clerk, Law Division
Superior Court of New Jersey
Hudson County Court House
595 Newark Ave,
Jersey City, NJ 07306

John D. Feeley, Esq.
Feeley & LaRocca, LLC
76 South Orange Avenue, Suite 201
South Orange, NJ 07079
Counsel for Plaintiff

Please take notice that on November 12, 2021, Defendant Town of Kearny filed a Notice of Removal (a copy of which is attached) of the above-captioned action from the New Jersey Superior Court, Law Division, Hudson County, Docket No. HUD-L-3913-21, to the United States District Court for the District of New Jersey.

APRUZZESE, McDERMOTT,
MASTRO & MURPHY, P.C.
Attorneys for Defendant

By: /s/ *Arthur R. Thibault*

Arthur R. Thibault, Jr., Esq.

Dated: November 12, 2021

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

Arthur R. Thibault, Jr., Esq. (#023631998)

Boris Shapiro, Esq. (Atty# 024742009)

APRUZZESE, McDERMOTT,

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Telephone: (908) 580-1776

athibault@ammm.com

Attorneys for Defendant

Town of Kearny

JOHN TAYAG-KOSKY,

Plaintiff,

v.

TOWN OF KEARNY,

Defendant.

Civil Action No.: _____
State Court Docket No. HUD-L-3913-21

NOTICE OF REMOVAL
(Electronically Filed)

TO: CHIEF JUDGE AND JUDGES OF THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ON NOTICE TO:

Clerk, Law Division
Superior Court of New Jersey
Hudson County Court House
595 Newark Ave,
Jersey City, NJ 07306
(Via Electronic Filing)

John D. Feeley, Esq.
Feeley & LaRocca, LLC
76 South Orange Avenue, Suite 201
South Orange, NJ 07079
Counsel for Plaintiff
(Via Federal Express and electronic filing)

HONORABLE JUDGES:

Defendant Town of Kearny notices the removal of this action pursuant to 28 U.S.C. §1441 to the United States District Court for the District of New Jersey, on the following grounds:

TIMELINESS OF REMOVAL

1. On or about October 6, 2021, Plaintiff John Tayag-Kosky (“Plaintiff”) commenced a civil action against the above-named Defendant in the Superior Court of New Jersey, Hudson County, Law Division, under Docket No. HUD-L-3913-21. A true copy of the Complaint is attached hereto as **Exhibit A**. To Defendant’s knowledge, the Complaint is the only process or pleading filed or served by any party.
2. Defendant first received notice of the civil action on or about October 27, 2021, when the Town Clerk was served with a copy of the Summons and Complaint.
3. Accordingly, pursuant to 28 U.S.C. §1446(b), this Notice of Removal has been timely filed within thirty (30) days after first notice to Defendant of the civil action.

BASIS FOR REMOVAL

4. This cause is a civil action within the meaning of the Acts of Congress relating to removal of causes.
5. In the First Count of the Complaint, Plaintiff alleges that Defendant violated federal law, namely the Uniformed Services Employment and Reemployment Rights Act, 38 USC §4301, et seq.
6. The Complaint, at Count Two, also includes state law claims for alleged violations of the New Jersey Law Against Discrimination, N.J.S.A. §10:5-1, et seq.
7. The above-described action is a civil action of which this Court has original jurisdiction under the provisions of Title 28, United States Code, Section 1331 (Federal question), in

that Plaintiff asserts a civil action based on a claim or right “arising under the Constitution, laws, or treaties of the United States.”

8. Because the United States District Court has original jurisdiction over Plaintiff’s claims, this case is subject to timely removal under 28 U.S.C. § 1441 and 1446.
9. The pendent state law claims arise from a common nucleus of operative facts which may be removed to the United States District Court pursuant to 28 U.S.C. § 1441(c).
10. There are no other named Defendants.
11. Defendant has not previously sought similar relief.

NOTICE / SERVICE

12. Pursuant to 28 U.S.C. § 1446, copies of this Notice of Removal have been served, via electronic filing through the Superior Court of New Jersey and Federal Express, upon Plaintiff’s counsel and upon the Clerk of the Law Division of the Superior Court, Hudson County, New Jersey through electronic filing.

WHEREFORE, Defendant Town of Kearny respectfully request that this Honorable Court take jurisdiction of this action and issue all necessary orders and process to remove said action from the Superior Court of New Jersey, Hudson County to the United States District Court for the District of New Jersey.

Respectfully submitted,

APRUZZESE, McDERMOTT,
MASTRO & MURPHY, P.C.
Attorneys for Defendant

By: /s/ Arthur R. Thibault
Arthur R. Thibault, Jr., Esq.

Dated: November 12, 2021

LOCAL CIVIL RULE 11.2 CERTIFICATION

I, Arthur R. Thibault, Jr, Esq., counsel for Defendant, certify that the claims in the matter are the subject of the following pending actions:

- 1) The above-captioned Superior Court Action bearing docket number HUD-L-3913-21; and
- 2) An appeal of Plaintiff's termination at the New Jersey Office of Administrative Law under docket number CSR 05320-2021.

APRUZZESE, McDERMOTT,
MASTRO & MURPHY, P.C.
Attorneys for Defendant

By: /s/ Arthur R. Thibault
Dated: November 12, 2021 Arthur R. Thibault, Jr., Esq.

CERTIFICATION OF SERVICE

I hereby certify that I served copies of this Notice of Removal on November 12, 2021, as follows:

TO: Clerk, Law Division
Superior Court of New Jersey
Hudson County Court House
595 Newark Ave,
Jersey City, NJ 07306
(Via Electronic Filing)

John D. Feeley, Esq.
Feeley & LaRocca, LLC
76 South Orange Avenue, Suite 201
South Orange, NJ 07079
Counsel for Plaintiff
(Via Federal Express and Electronic Filing)

APRUZZESE, McDERMOTT,
MASTRO & MURPHY, P.C.
Attorneys for Defendant

Dated: November 12, 2021

By: /s/ Boris Shapiro
Boris Shapiro, Esq.

EXHIBIT A

John D. Feeley, Esq. - ID# 030621997
Feeley & LaRocca, LLC
76 South Orange Avenue, Suite 201
South Orange, NJ 07079
(973) 821-4220
JFeeley@jjslawoffice.com
Attorneys for Plaintiff

JOHN TAYAG KOSKY,	:	SUPERIOR COURT OF NEW JERSEY
	:	HUDSON COUNTY - LAW DIVISION
Plaintiff(s),	:	Docket No.
vs.	:	Civil Action
TOWN OF KEARNY	:	COMPLAINT AND JURY DEMAND
Defendant(s).	:	

Plaintiff, John Tayag Kosky, residing at 70 West 32nd Street, Apt. 1E, Bayonne, Hudson County, New Jersey, complaining of the Defendant, says:

1. At all relevant times, Plaintiff was an employee of the defendant, Town of Kearny.

Plaintiff was hired on or about June of 2010 and was employed as a firefighter. Plaintiff always performed his duties in an exemplary manner.

2. At all relevant times, and while employed by the Defendant, Plaintiff was also on active duty status with the US Military and performing services as an Army Recruiter. This is not in violation of any rules or regulations promulgated by Defendant; at no time did Plaintiff fail to disclose his military status to the Defendant, and at no time did his military status interfere with Plaintiff's work.

3. On or about October 27, 2020 Plaintiff was suspended without pay by the Defendant and served with a Preliminary Notice of Disciplinary Action (31A); thereafter, on or about

November 20, 2020, an Amended Preliminary Notice of Disciplinary Action (31A) was served upon the Plaintiff by the Defendant. No Laudermill hearing was held after service of the Amended 31A. The Defendant sought termination of the Plaintiff.

4. A hearing on the disciplinary charges brought against the Plaintiff took place on December 17, 2020 and on March 30, 2021. At the hearing the Defendant presented false and pre-textual evidence; the Defendant found Plaintiff guilty of “failure to devote full time to the business of the Fire Department” by working in the military despite the fact that a majority of Kearny firefighters, including the Chief of the Department, hold a second job.

5. Subsequently, on or about May 13, 2021, Defendant served the Plaintiff with a Final Notice of Disciplinary Action (31C) effecting the termination of the Plaintiff.

6. the Defendant’s action in terminating the Plaintiff was primarily motivated by the Plaintiff’s status in the US military.

COUNT 1 (USERRA)

7. The actions of the defendant as aforesaid are in violation of the Uniformed Services Employment and Reemployment Rights Act. 38 U.S.C. § 4301 et seq.

COUNT 2 (NJ LAD)

8. The actions of the defendant as aforesaid are in violation of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq.

9. As a direct, foreseeable, and proximate result of the Defendant’s discriminatory act Plaintiff has suffered and continues to suffer substantial loss of earnings and job benefits and has suffered and continues to suffer great stress and emotional discomfort. The acts described were committed by the Defendant willfully and maliciously.

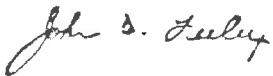
WHEREFORE, Plaintiff, John Tayag Kosky, demands judgment against the Defendant, for damages, both compensatory and punitive, together with attorney's fees, lawful interest, and cost of suit.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues herein.

DESIGNATION OF TRIAL COUNSEL

John D. Feeley is hereby designated as trial counsel pursuant to Rule 4:25-4.

By: 
John D. Feeley

Dated: October 6, 2021

CERTIFICATION PURSUANT TO RULE 4:5-1

It is hereby certified pursuant to Rule 4:5-1 as follows:

1. The matter in controversy is not the subject of any other action pending in any Court or of a pending arbitration proceeding and no such other action or arbitration is contemplated to the knowledge of this party.
2. This party knows at this time of no other parties that should be joined in this action.

By: 
John D. Feeley

Dated: October 6, 2021